TABLE OF CONTENTS

PAGE

Statement of Facts 1

Argument 3

I. The vessel is immune from process 3

II. The vessel's immunity from process is not affected by the fact that she carried commercial cargo 8

III. The suggestion was properly presented 12

IV. The suggestion is conclusive 15

TABLE OF CASES

Adriatic, The, 258 Fed. 902 16

Agency, etc., Co. *v.* American, etc., Co., 258 Fed. 363 16

Anne, The, 3 Wh. 435 12

Attualita, The, 238 Fed. 909 ..... 7, 15

Baiz, *In re*, 135 U. S. 403 13

Beers *v.* Arkansas, 20 How 527 ..... 3, 4

Briggs *v.* The Light Ships, 11 Allen (Mass.) 157 ..... 6, 8

Broadmayne, The (1916) P. 64 6

Carlo Poma, The, 259 Fed. 369 16

Charkieh, The, L. R. 4 A. & E., 59 10

City of Philadelphia, The, 262 Fed. 234 7

Claveresk, The, 264 Fed. 276 15

Constitution, The, L. R. 4 P. D. 39 ..... 5, 10, 13

Crimdon, The, 35 Times L. R. 81 ..... 6, 13

Davis, The, 10 Wall. 15 7

De Haber *v.* Queen of Portugal, 17 Ad. & El. (N. S.) 175 6

Duke of Brunswick *v.* King of Hanover, 2 H. L. Cas. 1 5

PAGE

Eolo, The (1918), Ir. 78 ..... 6, 15
Errissos, The, Lloyd's List, Oct. 24, 1917 6
Exchange, The, 7 Cr. 116 ..... 4, 6, 13, 15

Fidelity, The, 9 Ben. 333; 16 Blatch. 569 6
Florence H., The, 248 Fed. 1012 ..... 7, 14

Gagara, The (1919), P. 95 5

Jassy, The (1906), P. 270 ..... 5, 10
Johnson Lighterage Co., The, No. 24, 231 Fed. 365. 7

Lake Monroe, The, 258 Fed. 77 7
Long v. The Tampico, 16 Fed. 491 7
Luigi, The, 230 Fed. 493 7

Maipo, The, 252 Fed. 627 ..... 6, 8, 13, 15
Maipo, The, 259 Fed. 367 9
Mason v. Intercolonial Ry., 197 Mass. 349 6
Messicano, The, 32 Times L. R. 519 6
Mighell v. Sultan of Johore (1894), 1 Q. B. 149 ..... 5, 10

New Orleans-Belize Steamship Co. v. United States, 239 U. S. 201 7

Othello, The, 5 Blatch. 342 7

Pampa, The, 245 Fed. 137 ..... 6, 8
Parlement Belge, The, L. R. 5, P. D. 197 ..... 4, 5, 6, 9, 15
Porto Alexandre, The (1920), P. 30 ..... 6, 10
Prins Frederik, The, 2 Dod. 451 5

Roseric, The, 254 Fed. 154 ..... 6, 13, 14, 15

Sapphire, The, 11 Wall. 164 13
Scotia, The (1903), A. C. 501 10
Siren, The, 7 Wall. 152 3

Tampico, The, 16 Fed. 491 13

Vavasseur v. Krupp, L. R. 9, Ch. D. 351 6

Wadsworth v. Queen of Spain, 17 Ad. & El. (N. S.) 171 ..... 6, 13
Workman v. Mayor, etc., of New York, 179 U. S. 552 7

Young v. The Scotia (1903), A. C. 501 ..... 5, 6

Supreme Court of the United States

OCTOBER TERM, 1920

GIUSEPPE CAVALLARO,
Petitioner,

AGAINST

Steamship CARLO POMA,
Respondent.

No. 367

BRIEF FOR APPELLEE

Statement of Facts

This is a writ of *certiorari* in review of the affirmance by the Circuit Court of Appeals for the Second Circuit of an order of the District Court for the Southern District of New York staying the execution of process of arrest against the Italian steamship *Carlo Poma*. The libel alleges a cause of action for cargo damage on a shipment of lemons from Messina to New York. After process had issued to the United States Marshal for the Southern District of New York, pursuant to the prayer of the libel, proctors appearing specially for the Royal Italian Ambassador moved for an order staying the execution of process upon a formal suggestion made by Count V. Macchi di Cellere, Ambassador of the Kingdom of Italy to the United States,

"that said steamship *Carlo Poma* at all the times mentioned in the libel was, and now is, owned by the Government of the Kingdom of Italy, being registered in the

name of the Italian State Railways, a branch of said Government, and in the possession of the Government of the Kingdom of Italy, in the person of a master employed and paid by said Government, and wholly manned and operated by a crew employed and paid by said Government which said steamship is to transport back to Italy a cargo belonging to the Government of the Kingdom of Italy" (Record, fols. 25-28).

Annexed to the suggestion was a certificate by the Secretary of State of the United States that Count di Cellere "is duly accredited to this Government as Ambassador Extraordinary and Plenipotentiary from the Kingdom of Italy" (Record, fols. 21-24).

Accordingly, the court, as the order recites, after hearing proctors appearing specially in support of the motion and proctors for libellant in opposition thereto, "and being of the opinion that this court should not and will not take jurisdiction herein for the reason that said steamship *Carlo Poma* is represented to be public property of the Government of the Kingdom of Italy and in public use, such suggestion being made by the Ambassador of H. M. the King of Italy to the United States, and not herein denied", ordered that execution of process of attachment be stayed (Record, fols. 34-36).

On appeal to the Circuit Court of Appeals for the Second Circuit this order was affirmed (Record, fols. 61-79). Thereafter, this Court granted a writ of *certiorari*.

In the following argument the so-called appendix to the petitioner's brief, purporting to be an opinion on Italian law, and all references to it in the petitioner's argument, have been ignored. In the interest of proper procedure the Court should strike this interpolation from the files.

ARGUMENT

I

The vessel is immune from process.

"It is an established principle of jurisprudence in all civilized nations," as Chief Justice Taney said in *Beers* v. *Arkansas*, 20 How. 527, "that the sovereign cannot be sued in its own courts, or in any other, without its consent and permission." The exemption from direct suit is without exception, and there is no distinction in this respect between suits against the government directly and suits against its property. *The Siren*, 7 Wall. 152, 154.

While the immunity is a recognition of the independence of the sovereign authority, it is based, not upon any obsolete doctrine of sovereignty, but upon the highest considerations of public policy—upon the inconvenience and danger which would follow from any other rule. As applied to the domestic sovereign it represents the state's need for executive freedom from harassing litigation. In its application to foreign sovereigns, their embassies and their property, it is a manifestation of the desire to avoid international friction by substituting diplomatic negotiation for the decrees of local tribunals.

The immunity of foreign sovereigns is not, therefore, a mere deduction from the well settled immunity of the domestic sovereign; indeed, the immunity accorded has different bounds in the two cases. In the immunity of the local state, for instance, there is nothing analogous to the immunity given under certain circumstances to the servants of an ambassador. And the distinction between the two cases which should be recognized in theory is particularly important in practice, inasmuch as

the local state may, and usually does to some extent, waive its privilege and permit itself to be made a defendant in suits by individuals and by other states. Since this permission is altogether voluntary on the part of the sovereignty, it may prescribe the terms and conditions on which it consents to be sued, and may withdraw its consent at will. *Beers* vs. *Arkansas*, 20 How. 527, 529. Such voluntary subjection to suit by the local state has, however, no effect or bearing upon the complete immunity accorded to foreign sovereigns by the comity of nations.

In any consideration of the reason for the exemption of the person and property of one sovereign from the jurisdiction of the tribunals of another sovereign, the first case to be considered is, and always will be, as Lord Justice Brett said in *The Parlement Belge*, L. R. 5 P. D. 197, 208, *The Exchange*, 7 Cr. 116. In that case, in declaring the immunity of a French war vessel, Chief Justice Marshall demonstrated the principle in a manner which has since been universally followed:

"The world being composed of distinct sovereignties possessing equal rights and equal independence, whose mutual benefit is promoted by intercourse with each other, and by an interchange of those good offices which humanity dictates and its wants require, all sovereigns have consented to a relaxation in practice, in cases under certain peculiar circumstances, of that absolute and complete jurisdiction within their respective territories which sovereignty confers. * * * One sovereign being in no respect amenable to another, and being bound by obligations of the highest character not to degrade the dignity of his nation by placing himself or its sovereign rights within the jurisdiction of another, can be supposed to enter a foreign territory only under an express license, or in the confidence that the immunities belonging to his independent sovereign station, though not expressly stipulated, are reserved by implication, and

will be extended to him. * * * Without doubt, the sovereign of the place is capable of destroying this implication. He may claim and exercise jurisdiction either by employing force, or by subjecting such vessels to the ordinary tribunals. But until such power be exerted in a manner not to be misunderstood, the soverign cannot be considered as having imparted to the ordinary tribunals a jurisdiction which it would be a breach of faith to exercise."

In the leading English case on the subject, *The Parlement Belge,* L. R., 5 P. D. 197, where the Court of Appeal applied the doctrine to a Belgian mail packet, Lord Justice Brett stated the principle in these terms:

"The principle to be deduced from all these cases is that, as a consequence of the absolute independence of every sovereign authority, and of the international comity which induces every sovereign state to respect the independence and dignity of every other sovereign state, each and every one declines to exercise by means of its courts any of its territorial jurisdiction over the person of any sovereign or ambassador of any other state, or over the public property of any state which is destined to public use, or over the property of any ambassador, though such sovereign, ambassador or property be within its territory, and, therefore, but for the common agreement, subject to its jurisdiction."

Accordingly, immunity has been extended by English courts to a war vessel (*The Constitution,* L. R. 4 P. D. 39; *The Prins Frederik,* 2 Dod. 451, *semble*); to a sovereign prince (*Mighell* v. *Sultan of Johore,* [1894] 1 Q. B. 149; *Duke of Brunswick* v. *King of Hanover,* 2 H. L. Cas. 1); to a public vessel of Roumania (*The Jassy,* [1906] P. 270); to a public vessel of the Esthonian Provisional Government (*The Gagara,* [1919] P. 95; to a Belgian mail packet (*The Parlement Belge,* L. R. 5 P. D. 197); to a Canadian public ferry boat (*Young* v. *The Scotia,* (1903)

A. C. 501; to a vessel owned or requisitioned by the Portuguese government (*The Porto Alexandre,* (1920) P. 30); to requisitioned vessels belonging to private owners but operating under governmental control in the public service (*The Broadmayne,* (1916) P. 64; *The Messicano,* 32 Times L. R. 519; *The Errissos, Lloyds List,* Oct. 24, 1917; *The Crimdon,* 35 Times L. R. 81; *The Eolo,* (1918) Ir. 78), and to the property or funds of a foreign sovereign (*Vavasseur* v. *Krupp,* L. R. 9, Ch. D. 351; *DeHaber* v. *Queen of Portugal,* 17 Ad. & El. (N. S.) 171, 202; *Wadsworth* v. *Queen of Spain, Ib.* 171, 215). Lord Campbell said in *DeHaber* v. *The Queen of Portugal, supra,* that the only reference he had been able to find of any denial of immunity was the statement attributed to Selden in his Table Talk that in a case in which he appeared the King of Spain was outlawed in Westminster Hall, in default of appearance, for non-payment of costs. But Lord Campbell shows that the anecdote is apocryphal.

By our courts immunity has been extended to a French war vessel (*The Exchange,* 7 Cr. 116); to public vessels classed as naval transports (*The Maipo,* 252 Fed. 627; *The Pampa,* 245 Fed. 137); to light ships used in aid of navigation (*Briggs* v. *The Light Ships,* 11 Allen (Mass.) 157); to a municipal steam tug (*The Fidelity,* 9 Ben. 333; affd. 16 Blatch, 569), to a British requisitioned vessel (*The Roseric,* 254 Fed. 154), to the United States of Mexico, 29 Misc. 511, affd. 173 N. Y. 645, and to funds of a Canadian public railway (*Mason* v. *Intercolonial Ry.,* 197 Mass. 349).

The only difference between English and American law is that in our law, unlike English law (*Young* v. *The Scotia,* (1903) A. C. 501; *The Parlement Belge,* L. R. 5

P. D. 197), possession is essential, and process may attach if the property can be seized without ousting the actual possession of the sovereign's officers or agents. This distinction was applied in the following cases, all recognizing, however, the general doctrine as above stated: *The Davis,* 10 Wall. 15; *The Johnson Lighterage Co. No. 24,* 231 Fed. 365 (government property); *Long* v. *The Tampico,* 16 Fed. 491 (public vessel); *The Attualita,* 238 Fed. 909; *The Luigi,* 230 Fed. 493 (privately owned vessels requisitioned by a foreign sovereign; in the second case the owner had bonded); *The Othello,* 5 Blatch. 342; *New Orleans-Belize Steamship Co.* v. *United States,* 239 U. S. 202 (privately owned vessels time chartered to the United States). The general principle is also stated in *The Florence H.,* 248 Fed. 1012, and in *The Lake Monroe,* 258 Fed. 77, where immunity was denied to vessels requisitioned by the U. S. Shipping Board Emergency Fleet Corporation in accordance with the legislative declaration of public policy embodied in Section 9 of the Shipping Act of 1916. See, also, *The City of Philadelphia,* 263 Fed. 234.

The immunity proceeds, as this Court said in *Workman* vs. *Mayor, etc., of New York,* 179 U. S. 552,

"upon the hypothesis of the want of a person or property before the court over whom jurisdiction can be exerted. As a consequence the doctrine above stated rests, not upon the supposed want of power in courts of admiralty to redress a wrong committed by one over whom such courts have adequate jurisdiction, but alone on their inability to give redress in a case where jurisdiction over the person or property cannot be exerted. In other words the distinction between the two classes of cases is that which exists between the refusal of a court to grant relief because it has no jurisdiction to do so, and the failure of a court to afford redress in a case where the wrong is admitted and jurisdictional authority over the wrongdoer is undoubted."

II

The vessel's immunity is not affected by the fact that she carried commercial cargo.

The petitioner asserts, however, that the vessel's immunity was lost or waived because she carried a commercial cargo. Having regard to the fact that immunity is based upon her public character, the attempted distinction is clearly unsound. Several of the foregoing authorities are explicit on this point.

In one of the leading American cases, *Briggs* vs. *The Light Ships*, 11 Allen, 157, 165, Mr. Justice Gray, referring to the immunity of foreign public vessels, said:

> "The immunity from such interference arises not because they are instruments of war but because they are instruments of sovereignty; and does not depend on the extent or manner of their actual use at any particular moment, but on the purpose to which they are devoted."

And he added the pertinent reflection that it was "difficult to see how the government of a republic can hold any property for personal or private purposes" (p. 163).

Two of our own authorities are exactly in point. In *The Pampa*, 245 Fed. 137, a naval transport of the Argentine Republic carried a general cargo as an incident to her voyage to the United States to obtain coal and munitions for the use of the Argentine Republic. In *The Maipo*, 252 Fed. 627, a Chilean naval transport carried a commercial cargo as an incident to a voyage to this country to secure a cargo belonging to the Chilean government. Judge Mayer squarely determined that the vessel was immune although engaged in commercial enterprise; and he held that there was no distinction in principle whether the wrong com-

plained of arose, as in that case, out of breach of contract, or, as in *The Pampa, supra,* out of a tortious injury.

The Maipo came before the District Court a second time, and Judge Hough fully concurred in Judge Mayer's conclusion (259 Fed. 367). He said:

"Why was a war vessel exempt from seizure? Not because it was a war vessel, but because it was a part of the exercise or manifestation of sovereign power. Why is any other vessel exempt? Why may any other piece of property be exempt? For the same reason, just as the Sovereign himself is exempt. Now, it may be the opinion of counsel, as it assuredly is my opinion, that when a Sovereign Republic, Empire or what-not, goes into business and engages in the carrying trade, it ought to be subject to the liabilities of carriers just as much as any private person, but I think it must be plain that if I, in my official capacity, were to assert that view and enforce it, I would be assuming (in this case) as one of the humbler officers of the Government of the United States, to prescribe to the Republic of Chile what that Republic should consider to be a governmental function. If the Republic of Chile considers it a governmental function to go into the carrying trade, as would appear to be the case here, that is the business of the Republic of Chile; and if we do not approve of it, if we do not like it, if we do not wish any longer to accord that respect to the property so engaged, which has hitherto been accorded to government property, then we must say so through diplomatic channels, and not through the judiciary."

In *The Parlement Belge,* L. R. 5 P. D. 197, where the vessel carried passengers and freight as well as mail, Lord Justice Brett said:

"As to the second [contention, that a use of the vessel in part for trading purposes takes away the immunity] it has been frequently stated that an independent sovereign cannot be personally sued, although he has carried on a private trading venture. It has been held that an ambassador cannot be personally sued, although he has

traded; and in both cases because such a suit would be inconsistent with the independence and equality of the state which he represents. If the remedy sought by an action *in rem* against public property is, as we think it is, an indirect mode of exercising the authority of the court against the owner of the property, then the attempt to exercise such an authority is an attempt inconsistent with the independence and equality of the state which is represented by such owner."

In *The Scotia,* [1903] A. C. 501, the ferry boat formed the connecting link in a Canadian governmental railway system operated, of course, for commercial purposes. In *The Jassy,* [1906] P. D. 270, the vessel carried mails, passengers, and cargo in connection with the National Railways of Roumania. In *The Constitution,* L. R. 4 P. D. 39, the American man-of-war carried cargo consisting principally of private property which had been exhibited by its owners at the Paris Exhibition. In *Mighell* v. *Sultan of Johore,* [1894], 1 Q. B. 149, the defendant while residing incognito in England had contracted to marry. Sir Robert Phillimore's dictum to the contrary in *The Charkieh,* L. R. 4 A. & E. 59, was expressly disapproved in *Mighell* v. *Sultan of Johore,* [1894] 1 Q. B. 149, and in *The Parlement Belge,* L. R. 5 P. D. 197.

In the recent case of *The Porto Alexandre* (1920), P. 30, the English Court of Appeal reaffirmed the doctrine of *The Parlement Belge, supra,* holding that a vessel owned or requisitioned by a sovereign independent state and earning freight for the state is not deprived of the privilege decreed by international comity of immunity from the process of arrest by reason of the fact that she is being employed in ordinary trading voyages carrying cargoes for private individuals. It appears that the

vessel went aground at the entrance of the Mersey, and the claims against her were for salvage services rendered by three Liverpool tugs. Mr. Justice Hill had set aside the writ *in rem* on his conclusion that the law as laid down in *The Parlement Belge* was that a sovereign state could not be impleaded either by being served *in personam* or indirectly by proceedings against its property; and if that were the principle, it mattered not how the property was being employed.

Lord Justice Scrutton said:

"Now this state and other states proceed in their jurisprudence on the assumption that sovereign states are equal and independent, and that as a matter of international courtesy no one sovereign independent state will exercise any jurisdiction over the person of the sovereign or the property of any other sovereign state; and now that sovereigns move about more freely than they used to, and do things which they used not to do, and now that states do things which they used not to do, the question arises whether there are any limits to the immunity which international courtesy gives as between sovereign independent states and their sovereigns. * * * There being no limitation in the case of the sovereign, and no limitation in the case of the ambassador, is there any limitation in the case of the property? Mr. Dunlop has argued before us that in the case of property of the state there is a limitation, and that—as I understand him—if the property is used in trading that cannot be for the public service of the state."

And he held, following *The Parlement Belge*, that there was no such limitation. He concludes by pointing out the only available remedy:

"I quite appreciate the difficulty and doubt which Hill, *J.*, felt in this case, because no one can shut his eyes, now that the fashion of nationalization is in the air, to the fact that many states are trading, or are about to trade, with ships belonging to themselves; and if these

national ships wander about without liabilities, many trading affairs will become difficult; but it seems to me the remedy is not in these Courts. *The Parlement Belge* excludes remedies in these Courts. But there are practical commercial remedies. If ships of the state find themselves left on the mud because no one will salve them when the State refuses any legal remedy for salvage, their owners will be apt to change their views. If the owners of cargoes on national ships find that the ship runs away and leaves them to bear all the expenses of salvage, as has been done in this case, there may be found a difficulty in getting cargoes for national ships. These are matters to be dealt with by negotiations between Governments, and not by Governments exercising their power to interfere with the property of other states contrary to the principles of international courtesy which govern the relations between independent and sovereign states."

III

The suggestion was properly presented.

The petitioner contends that the suggestion was not properly presented. Coming from an Ambassador, there could be no higher source of information. A public minister, as Mr. Justice Story said in *The Anne*, 3 Wh. 435, 445, is intrusted, by virtue of his office, with authority to vindicate the prerogatives of his sovereign. Our State Department assented to the presentation of the suggestion, as appears by the certification of the Secretary of State to Count di Cellere's official status. But it is argued that the suggestion should have been made by the Government of the United States or one of the departments. On principle this contention is unsound. Inasmuch as the doctrine of immunity is based upon the independ-

ence and dignity of the foreign sovereign, it cannot be that he must resort to the public authorities of another nation for the assertion of his rights. Such dependence would be incompatible with the recognition of independence. To deny a foreign sovereign the privilege of bringing suit in our courts would, as this court said in *The Sapphire,* 11 Wall. 164, "manifest a want of comity and friendly feeling." The denial of his right to assert for himself his immunity from suit would be equally contrary to international comity.

The procedure disclosed by the reported cases has not been uniform. While sometimes presented through officials of the sovereign of the place (as in the case of *The Exchange,* 7 Cr. 116), the suggestion has often been made directly by the accredited representative of the foreign sovereign (as in *The Maipo,* 252 Fed. 627; *The Constitution,* L. R. 4 P. D. 39, and *The Crimdon,* 35 Times L. R. 81), or by counsel on his behalf as *amici curiæ* (as in *The Roseric,* 254 Fed. 154, and *The Adriatic,* 253 Fed. 489). In *Wadsworth* v. *The Queen of Spain,* 17 Ad. & Ell. 171, 215, a writ of prohibition was granted on the application of a garnishee after a plea of *nil habet.* In *The Tampico,* 16 Fed. 491, Judge Addison Brown, while stating that "objection to the jurisdiction alone might doubtless have been raised upon the information of the Attorney General of the United States, or the direct intervention of the accredited political representative of the Mexican Government", approved the intervention of any agent who could produce proper proof of his authority. As Judge Mayer said in *The Maipo,* 252 Fed. 627:

"While, in many instances, the suggestion that a ship is the property and in the possession of a foreign govern-

ment would be made to the court by the appropriate official department of our own government, I fail to find any support for the proposition that such course is necessary. *In re Baiz*, 135 U. S. 403. It is enough that the fact is presented to the court, as here, by the duly accredited official of the foreign government."

Judge Rellstab took the same view in *The Roseric*, 254 Fed. 154. "No case has been cited", he said, "that holds as a matter of law that such a suggestion will not be received from a foreign sovereign's representative". But it is submitted that he put the matter on too low a plane when he expressed the opinion that "the sources from which such suggestion shall be received is a matter of judicial discretion".

There is nothing to the contrary, as the petitioner seems to think, in the dicta quoted from *The Florence H*, 248 Fed. 1012. In that case the vessel, owned by the Emergency Fleet Corporation, had been chartered to the French government, and at the time of the collision complained of was manned by a French crew. The facts were presented by, and decided upon, a stipulation. It was in answer to the argument of counsel for the French Republic that the libel might require a scrutiny of the conduct of the French crew and thus lead to embarrassment diplomatically, that Judge Learned Hand said, "If the cause is to be stayed for such reasons, the most obvious proprieties demand that the suggestion shall arise from the only source to which the court has any right to look."

IV

The suggestion is conclusive.

The petitioner contends that the court was not warranted in acting upon the suggestion, and should have inquired into the facts to determine whether the claim advanced in the suggestion was well founded.

As the order of the District Judge recites, proctors for the petitioner appeared in opposition to the granting of the order; and the court "being of opinion that this court should not and will not take jurisdiction herein for the reason that the said steamship *Carlo Poma* is represented to be public property of the Government of the Kingdom of Italy and in public use, such suggestion being made by the Ambassador of H. M. the King of Italy to the United States, *and not herein denied*" (Record, fol. 35) stayed execution of process.

Inasmuch as the libellant did not traverse the suggestion, it is in any event conclusive as to all material statements of fact. *The Roseric*, 254 Fed. 154.

It is therefore a matter of merely academic interest that there is abundant authority to the effect that such a suggestion is conclusive. *The Parlement Belge*, L. R. 5 P. D. 197; *The Exchange*, 7 Cr. 117; *The Claveresk*, 264 Fed. 276, 280; *The Maipo*, 252 Fed. 627; *The Roseric*, 254 Fed. 154; *The Attualita*, 238 Fed. 912; *The Eolo*, (1918) Ir. 78, *semble*. In the first case Lord Justice Brett said:

"As to the first, the ship has been by the sovereign of Belgium, by the usual means, declared to be in his possession as sovereign, and to be a public vessel of the state. It seems very difficult to say that any court can inquire by contentious testimony whether that declaration is or

is not correct. To submit to such an inquiry before the court is to submit to its jurisdiction. It has been held that if the ship be declared by the sovereign authority by the usual means to be a ship of war that declaration cannot be inquired into. That was expressly decided under very trying circumstances in the case of *The Exchange*, 7 Cr. 116. Whether the ship is a public ship used for national purposes seems to come within the same rule."

In *The Claveresk*, *supra*, the Circuit Court of Appeals for the Second Circuit stated that it felt "no inclination to depart from the rulings of *The Carlo Poma*, 252 Fed. 396, and *Agency, etc., Co. v. American, etc., Co.*, 258 Fed. 363, holding that a certificate such as this, describing a certain act and avowing it as governmental, is to be taken as verity."

The Circuit Court of Appeals for the Third Circuit has reached the same conclusion.

The Adriatic, 258 Fed. 902, 904.

The petitioner has at no time challenged the facts suggested, and his contention that the suggestion should be subjected to contentious testimony is contrary to established principle and practice.

It is respectfully submitted that the order should be affirmed.

VANVECHTEN VEEDER,
Appearing specially on behalf of the
Royal Italian Ambassador for the
Steamship *Carlo Poma*.

January, 1926.